

REMARKS

The Examiner has indicated that a prima facie case of obviousness of claims 1 and 3 had been established under 35 U.S.C. 103 (a), as being unpatentable over Gast et al., Harrison et al., WO 99266556, Hesse et al (U.S. Patents 5,472, 957 and 3,901,928), and DeLuca et al. (WO 90/01321).

Although the applicant does not agree that such references establish a prima facie case of obviousness, assuming, arguendo, that such a prima facie case of obviousness has been established, applicant has provided rule 132 Declaration of Dr. Yamagishi, at the time a professor at the department of clinical veterinary medicine in Iwate University, Japan. Dr. Yamagishi conducted experiments under his supervision and control which demonstrated unexpected results for the invention.

Although the Examiner had objected to the evidence on the basis that the Declaration is directed to a specific concentration that is not in the claims, applicant has amended the claims to recite the specific concentration in the experiments conducted by Dr. Yamagishi so as to conform the showing of objective evidence of non-obviousness which is commensurate in scope with the claims.

Although the Examiner further criticizes the Declaration as “refers only to the system described in the above-referenced application and not to the individual claims of the application”, applicants disagree. The Declaration is objective evidence based on experimental results conducted under Dr. Yamagishi’s supervision and control. It is to the actual experimental results, which are now commensurate in scope with the concentration which is specified in the claims that makes the objective evidence of non-obviousness commensurate in scope with the claims, and applicants do wish to point out that Dr. Yamagishi, in paragraph 3 of the Declaration, indicated that he is familiar with the above-identified application “including the currently pending claims thereof”, and thus the

Examiner's criticism of Dr. Yamagishi's Declaration on the basis of reference to a "system", rather than pending claims appears inapplicable to the instant facts.

For all the foregoing reasons applicants respectfully submit that the alleged prima facie case of obviousness, based on the combination of references, has been overcome by the Rule 132 Declaration of record and the allowance of application is respectfully requested.

Applicant's undersigned representative had attempted to contact the Examiner prior to the filing of this Amendment but was unable to reach the Examiner. Thus, if any additional issues remain, the Examiner is kindly invited to contact the undersigned by telephone for a brief telephonic or personal interview to resolve any issues relating to the allowance of the above-identified application.

For the foregoing reasons, favorable reconsideration and withdrawal of the previous rejection and passage of the application to issue are respectfully requested.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 14-1437, under Order No. 8721.004.US0000.

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Respectfully submitted,



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